

THE MARTHA'S VINEYARD COMMISSION

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Minutes of the Meeting of March 18, 2004

Held in the Stone Building,
33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

Commissioners: James Athearn (Elected – Edgartown), John Best (Elected – Tisbury), Christina Brown (Elected – Edgartown), Jane Greene (Appointed – Chilmark), Katherine Newman (Appointed – Aquinnah), Ned Orleans (Appointed – Tisbury), Megan Ottens-Sargent (Elected – Aquinnah), Robert Schwartz (Appointed – West Tisbury), Doug Sederholm (Elected – Chilmark), Paul Strauss (Appointed - County Commission), Richard Toole (Elected – Oak Bluffs), Andrew Woodruff (Elected – West Tisbury)

Staff: Paul Foley (DRI Analyst/Planner), Mark London (Executive Director), Jo-Ann Taylor (DCPC Coordinator, DRI Coordinator), Bill Veno (Senior Planner)

1. DCPCs IN EDGARTOWN – PROPOSED BOUNDARY AMENDMENT TO ISLAND ROAD DISTRICT AND PROPOSED AMENDMENTS TO REGULATIONS FOR SEVERAL DISTRICTS – PUBLIC HEARING

Commissioners present: J. Athearn, J. Best, C. Brown, J. Greene, K. Newman, N. Orleans, M. Ottens-Sargent, R. Schwartz, D. Sederholm, P. Strauss, R. Toole, A. Woodruff

Jim Athearn opened the public hearing to hear testimony and receive evidence as to whether the Commission should expand the boundaries of the Island Road District in the Town of Edgartown to add the following to the list of Major Roads:

- Meetinghouse Way from Edgartown-West Tisbury Road to Slough Cove Road,
- Slough Cove Road from Herring Creek Road to Meetinghouse Way,
- Litchfield Road from Chappaquiddick Road to School House Road,
- Clevelandtown Road from Katama Road to Road to The Plains,
- Meshacket Road from Edgartown-West Tisbury Road to Road to The Plains,

- Planting Field Way from Pease's Point Way to its termination as a public road.

The hearing also served to determine whether the proposed amendments to the Town of Edgartown's regulations conform to the guidelines for the development of the Coastal District, Island Road District, Special Places District and the Cape Pogue District specified in the Commission's designation of the districts.

1.1 Staff Report

Jo-Ann Taylor explained that the procedure.

- The Commission considers the proposed additions to the Island Roads District as a new nomination; the Commission, at a previous meeting, had accepted the nomination for consideration.
- The criteria for approving the additions to the Island Road District are found in the Critical Planning District Qualifications and include:
 - It is the critical area or critical resource, which is in need of protection.
 - It is the logical planning area which should be considered in adopting a coordinated system of regulations to protect the critical resource or critical area.
 - The dimensions or landmarks, which form the boundary of the district, are convenient and recognizable.
- The Edgartown Planning Board is also proposing amendments to regulations.
- The criteria for approving the proposed amendments to regulations are how well they conform to the guidelines for the designation for the various districts.

Alan Wilson of the Edgartown Planning Board spoke about the proposal.

- In reviewing roads, the Board identified additional roads and their rural aspect, which should be protected under the Island Road District.
- The Board's proposal meets the guidelines for the development of the Island Roads District as designated by the Commission on December 22, 1975.
- The Board proposes that certain restrictions be placed on the roads in the Island Roads District and proposes a 25' no-cut no-build zone, regulations regarding fences, walls, and hedges, and restrictions on building and installation of man-made objects.
- He explained that no rights would be removed but, to work outside of the restrictions, owners would need to come before the planning board. The board intends to work with owners on a one-on-one basis and special permits would be issued.

Jane Greene asked whether wording permitted invisible fences such as those used for dogs, because of the related excavation and cutting of vegetation. She asked whether "corner lot" should be "street corners"; **Alan Wilson** confirmed that it would be a good idea.

Doug Sederholm explained his concern about limitations on the types of fences and walls that can be erected. On farmland, livestock may require wire mesh fences higher than 3 feet. He is concerned that the restrictions will impinge on existing agricultural uses.

James Athearn clarified that the Commission needs to decide only whether the proposed amendments conform to the guidelines for development of the various District designations. Then, Edgartown Town Meeting votes on the amendments.

1.2 Testimony from Nominating Board

Karl Watt of the Edgartown Planning Board spoke about a proposed amendment that impacts the Cape Poge DCPC and the Coastal District.

- This proposal came out of the way builders were manipulating the mean natural grade and the way the height of buildings have been measured to increase the height of a building. The proposal also clarifies how a flat roof is designated.
- Prohibiting certain activities relating to excavation, filling, natural vegetation and storage in the Special Places District and in the Cape Poge DCPC would further protect those areas and require owners to apply for a special permit for certain activities.

Christina Brown clarified that the list of prohibited uses appears in three of the DCPCs in Edgartown. The list isn't new; it's simply being added to already existing DCPCs.

Jane Greene asked about how "commonly found vegetation" is defined. **Karl Watt** explained that the Board defers to the Conservation Commission on the issue of vegetation; it makes detailed findings and then reports to the Edgartown Planning Board.

Jane Greene asked about the prohibition of "storage areas or tanks for chemicals, petroleum products, or any toxic or hazardous materials." Does that prohibit the landowner from having propane tanks? **Karl Watt** explained that if it is incidental to permitted use, the Board would like to know about the use so they can give guidelines, particularly in light of the environmental sensitivity of the area. **Christina Brown** explained that in the Cape Poge DCPC, the wording is a little bit different. In most of the DCPCs there are permitted uses in single-family houses and associated structures with the wording for other uses "except as may be necessary or incidental to a permitted use". In Cape Poge, everything requires a special permit with the wording "unless allowed by Special Permit".

In response to **Megan Ottens-Sargent's** question about how much of Cape Poge is not part of the Coastal district, **Karl Watt** explained that almost all of Cape Poge is part of the Coastal District, except for the high ground at Wasque. The only place currently designated "Special Places" is Sampson's Hill.

Christina Brown explained that the Special Ways amendment is to clear up an inconsistency in the regulations. If a special permit is issued to cross a special way, existing vegetation may need to be cut. Presently, the regulation prohibits any cutting of vegetation.

1.3 Public Testimony

Jim Athearn invited public testimony on the Edgartown Planning Board's proposed additions to the Island Roads District and amendments to regulations.

Eric Peters, a former resident of Clevelandtown Road for 13 years and a resident of Edgartown for 23 years, raised the following concerns.

- Administration of new zoning would be problematic.
- Today, only about 5% of the land in this new proposed Island Road District has not been built on so adding these new regulations will designate a majority of properties as "pre-existing, non-conforming".
- Originally, the Island Road District was intended to establish a height limit on houses so many feet back from the road and to limit the number of new access roads.
- Under the proposed regulations, current property owners would have a lot of difficulty determining what they can and can't do with their property, and the administrative aspect of applying for a special permit to work on an already pre-existing, non-conforming lot could be nightmarish.
- The height limitations won't change the height of structures and may, in fact, create a problem for builders who are trying to build into a hillside for energy and low impact purposes.
- In terms of the Cape Poge DCPC, the new language is in conflict with existing language so that a permitted use becomes a prohibited use requiring a special permit and he suggested that the language be revised.

Paul Strauss reiterated that the Commission's purpose is to determine whether the proposal is in conformance with the guidelines for development of the Districts. The details of the proposal should be discussed at Town Meeting where the townspeople are being asked to agree or disagree with the details of the proposal.

Ben Hall, Jr. said that he spoke on behalf of himself and residents of Edgartown/Vineyard Haven Road.

- He objected to the expansion of the regulations that would create huge numbers of non-conforming lots.
- The Commission's purpose is to plan for appropriate development and to protect the inherent nature of the Island. But in this case the district is being so widely expanded that over two hundred lots would become non-conforming. These tend to be the smallest, least expensive lots on the Island, belonging to people who don't necessarily have the means or experience to negotiate special permit applications.

- The regulations would apply to many lots that are only 100 feet deep and, by creating the 25-foot no-build zone, would remove 25% of owners' ability to build or expand or even put in lawns. The burden of these regulations is too big on people with small lots.
- This is extraordinary regulation of streets that are primarily no longer rural in character.
- The Island Road District was established to create height limits and limits on the number of curb cuts onto roads. The changes don't represent wise planning and the Planning Board should look at other ways to establish protections without creating so many non-conformities.

In response to a question from **Paul Strauss**, **Alan Wilson** used the map to clarify the existing District and the proposed additions. He explained that Planting Field Road is a tree-lined street that would be protected and that the Planning Board doesn't yet have a tree by-law.

Eric Peters commented that West Tisbury has a statute in place regarding cutting trees on certain streets. If Edgartown wants to protect trees, the town should create a statute for just that. He asked whether Planting Field Way is in an R-5 planning district, with a set-back of 20 feet, in conflict with the proposed 25 foot no-cut no-build zone.

Alison Cannon, of the Edgartown Planning Board, said that the houses on Planting Field Way are of all different sizes and shapes and the goal of including the street in the Island Road District is to preserve the rural nature of the street. A special permit for work outside of the regulations seems a small price to pay for maintaining the rural nature of the street.

Ben Hall, Jr. commented on the R-5 and the way setbacks are determined within an R-5.

In response to **Andrew Woodruff's** question about the number of public meetings, it was clarified that two public hearings had been held on the matter. **Ben Hall, Jr.** added that many residents weren't aware that the proposal would affect their property.

Karl Watts commented that the Planning Board could only make the proposal based on its mandate to maintain the character of the town. The voters will decide.

Ben Hall, Jr. said that he feels that the Commission has to decide whether it will let the Edgartown Planning Board use the Commission's power to create districts with 75% non-conformity.

The public hearing closed at 8:50 p.m.

A short recess was taken and the meeting reconvened at 8:55 p.m.

2. 111 REALTY TRUST, 111-117 NEW YORK AVENUE – PUBLIC HEARING

Commissioners present: J. Athearn, J. Best, C. Brown, J. Greene, K. Newman, N. Orleans, M. Ottens-Sargent, R. Schwartz, D. Sederholm, P. Strauss, R. Toole, A. Woodruff

Present for the Applicant: Jack Robinson of Martha's Vineyard Resort and Racquet Club, Claudette Robinson, and James Weisman, architect

Christina Brown opened the public hearing and explained the hearing procedure.

2.1 Applicants Presentation

Mr. Robinson explained the proposal.

- The project is being proposed for the Robinsons' property on New York Avenue that is made up of 10 once-buildable lots with 250 feet of frontage.
- The project is for an addition to their building, which in 1971 became the first African-American-owned resort on the East Coast.
- The current building has five guest rooms and a large lobby.
- Adequate parking exists and parking for the addition is planned.
- An engineer did a professional analysis of the site for septic.
- With the addition, the building will fall under the definition of 'hotel' and will require a Special Permit from the Planning Board.
- On May 3rd, 1991, the Commission approved the original application for conversion of a residential property into a non-profit, recreational-use club.
- To summarize, the addition is fourteen rooms added to an existing building with five rooms and a very large first floor lobby. The existing building is 4512 square feet; the addition is 4900 square feet.
- The building is on the bus route.
- The design of the proposed project is within the guidelines of historic structures and intends to conform to Oak Bluffs zoning.

James Weisman explained the design.

- They want to maintain the openness of the large site and fit standard setbacks and the height restriction of 32 feet.
- The design includes a mansard roof, a sweeping porch, no gingerbread, single windows, and a shingle exterior.
- Handicapped access with access to the street is part of the design.
- The applicants are amenable to the Martha's Vineyard Transit Authority installing a permanent bus stop and are encouraging walking and bike riding.
- Parking will be gravel; there is room for more parking if necessary.
- The applicant is working with engineers to save trees in the septic design.
- The hotel provides amenities for the island and provides more places for people to stay.

- To do this project in a residential area will require a Special Permit from the Planning Board.
- The goal of the landscaping plan is to keep the area as green as possible, with a brick pathway with flowering plantings. The only paving will be the already paved circular drive.
- If the goal of the Commission is to protect the interests of the Island, the project should be supported because it is within the parameters of the Commission.

In response to a question from **Christina Brown** about trees, **James Weisman** said that two trees will be removed, one of which is already dead. He explained the placement of the trees. **Jack Robinson** explained that he had hired a certified arborist to assess tree damage.

Bob Schwartz asked about the accuracy of tree placement on the plan. **Jane Greene** asked about the accuracy of the siting on the southeast corner.

Bob Schwartz said he would like to see an engineering survey that included the existing trees. **Jane Greene** said she would like to see the neighbor's house sited on the plan.

2.2 Staff Report

Jo-Ann Taylor gave the staff report.

- A Special Permit from the Planning Board would be required for the hotel.
- The setback seems somewhat less than 25 feet, which would require a variance from the Zoning Board of Appeals. The existing structure is within the setback but the proposed porch would encroach.
- The traffic study is in the notes. After the site visit there were some questions about the relationship between the town layout and the resort's parking. In the Commission's 1991 decision, a condition called for the elimination of the need to back onto Chickawaukee Street; the revised parking plan should be totally contained on the property and should have one access/egress, with parking screened from abutters with plantings.
- She noted that the Applicant had not addressed the issue of affordable housing. The applicant has been provided with the policy.
- In terms of scenic values, the height of the proposed building at 30 feet is a bit taller than neighboring structures; the length of the proposed building at about 100 feet is more than twice as long as surrounding structures, which are generally in the 31 to 42 foot range.
- **Jo-Ann Taylor** explained that the Commission would look at how this proposal fits into the Oak Bluffs Master Plan that describes the town as a "family oriented resort community". The Master Plan survey indicates that commercial growth is largely unfavored on New York Avenue but, if there were to be commercial development there, the leading uses favored are home-based offices or bed and breakfasts.

Mark London commented that although New York Avenue is not designated an historic district, it's important to ask what the defining characteristics of a streetscape are. There is some variety in size and forms of buildings and some variety in materials. Will a 100 foot long, three story building fit on a street with 30 to 40 foot long buildings, few of which have the perception of being three stories? Is one long building better than ten shorter ones, which the site could potentially have?

Jo-Ann Taylor spoke about the septic which would have a typical leaching field. This is not a sensitive watershed area. The biggest issue appears to be trying to maintain the trees. **James Weisman** said that he is still working with the engineer on a split leaching field. Currently two trees will need to be removed.

Mark London spoke about the traffic analysis done by Andrew Grant, who is the interim traffic planner.

- The owner's analysis, done by James Weisman, shows that there will be fourteen additional trips during peak period. Andy concurred that the impact on the traffic on the street would not be significant. The delay time for getting out of the street is between 14 and 20 seconds.
- The parking by-laws would appear to require more spaces than the applicant feels he needs. Andy concurred that the applicant not be required to put in all the paved or graveled areas, but he supports eliminating the use of parking directly on Chickawaukee.
- In terms of mitigation, the applicant encourages the use of public transportation. The applicant has offered to put in a bench and bus stop. Andy recommended putting in a bench but suggested that a formal layby may not be necessary.

Christina Brown explained that the staff notes and traffic analysis are available to anyone interested in viewing them.

1.3 Commissioner Questions

Ned Orleans asked whether the porch was included in the 4900 square foot figure. **James Weisman** responded that, no, the porch is not.

Referring to the list of inns and hotels in Oak Bluffs, **Ned Orleans** asked for an indication of which of those establishments are in residential zones and which, in areas zoned residential, are 9500 square feet or greater.

Bob Schwartz asked whether a sidewalk would be built. **James Weisman** felt they didn't want to build sidewalks that wouldn't continue beyond the owner's frontage.

Katherine Newman asked Mr. Robinson about the size of the lobby. He answered that for many years there was no place for African Americans to gather. Currently the lobby is used for people 35 or older to watch movies or football.

Jane Greene said that, in 1991, the building became a tennis club/resort and people staying were to be members of the club.

Mr. Robinson said that the purpose of the club was to create a communal space with clay tennis courts and a place for people to gather. The resort is not really a B&B nor is it a resort. He volunteered that 93% of the clients are Caucasian, 5% are African American or Asian, 90% of the guests are repeat customers.

Jane Greene asked whether the resort was a club or a private hotel. In 1991, when the Commission approved the application, it approved it as a club. **Mr. Robinson** said guests don't have to be members to stay there. **Christina Brown** said that perhaps that's a question that could be clarified later.

John Best and **Paul Strauss** asked that the **Robinson's** clarify what kind of food service is available. When asked about cooking facilities, the **Robinson's** responded that they serve a continental breakfast and that no cooking is done on site. The new rooms will not have kitchenettes.

1.4 Public Testimony

Christina Brown opened the hearing to public comment.

Roger Wey, a selectman from Oak Bluffs, clarified that he was speaking as an individual, not as a representative of the Board. He said that the Board of Selectmen had not taken a position, but had agreed that individual members could express their opinions. He said he is totally opposed to a nineteen-room hotel in a residential area. He believes that it will be too overwhelming for the neighborhood in terms of traffic, size and numbers of people. He clarified that his issue is not a hotel in a residential area; his issue is the size of the building and the related traffic.

Bob Dumais, a neighbor, said he is concerned with noise, lighting, wedding functions, tennis courts being lit at night, traffic and the looks of the building. He stated that the size of his house would be overwhelmed by the size and looks of the building. He said that **Mr. Robinson** is a wonderful neighbor and that the resort, as is, has presented no problems.

John Breckenridge, of Clay Avenue, said he has had no complaints about the current facility but the addition of 14 rooms dramatically changes the **Robinson's** presence in the neighborhood. Other residences and businesses are not of the same scale the **Robinson's** are proposing. The other large hotels in the **Robinson's** comparison are downtown. In addition, the parking plan will have a dramatic effect on the greenery of the resort. This is a residential neighborhood not appropriate for a project of this scale.

Michele Lazerow said that the proposal is way out of proportion to the neighborhood. Five to seven rooms are reasonable. Nineteen isn't. 100 feet fronting on New York Avenue is out of proportion. She asked about the distance between the porch and the property lines and whether those conform to setback requirements. She is concerned about people parking on New York Avenue and egress and access on New York Avenue. She asked about screening proposals. A mansard roof has a very different impact than gables. She believes the project is more appropriate for downtown than in a residential neighborhood.

Ken Taylor asked about the conditions when the resort was originally approved. **Christina Brown** explained that the Commission will be reviewing the original conditions and they are available if anyone would like to view them. He said, as a point of interest, that the paper road behind the property could someday have two houses on it.

Ann Margetson is not an abutter but is very opposed to the project. She was opposed to the original tennis club because no variances were supposed to have been granted at that time. The project is completely out of scale for the neighborhood. If this is a residential area, why is a major hotel being considered?

In response to a question from **James Athearn**, a neighbor said that he has had no awareness of noise in the evening but the present building is totally enclosed, with no porch. **Bob Dumais** said the addition would be 17 feet from his lot line.

Jane Greene asked whether the applicant intends to have weddings. **Jack Robinson** responded that they have always had weddings.

Paul Strauss would like to see a comparison of the number of rooms and the square footage of other hotels in Oak Bluffs, particularly those along New York Avenue. He would also like the presentation to respond to the need for more hotel rooms. Can the **Robinson's** provide evidence that Oak Bluffs needs more hotel rooms?

Megan Ottens-Sargent asked whether the Racquet Club has a membership plan. She also asked whether the Robinsons would be expanding their club membership because the numbers would pertain to traffic and parking. **Jackie Robinson** responded that they have about forty members. The resort is part of the International Health and Racquet Sports Club Association and clubs who are members honor each other's cards. The resort has no night tennis, as per the 1991 conditions. **Megan Ottens-Sargent** asked for a membership plan and a lighting plan. **James Weisman** explained that there would be lighting under the porch and on the brick walkway. **Christina Brown** asked for a specific plan.

Megan Ottens-Sargent commented on the potential for the ten-lot parcel. She asked that Commission staff look at the potential for development of that parcel.

Katherine Newman commented that neighborhood resistance appears to be because of the impact of the expansion. She asked whether the Robinsons would consider a Plan B. **Mr. Robinson** said that everything is on the table and that this is their first presentation before the Commission.

Jane Greene asked about access by taxi. Mr. Robinson said that the access would be the same, through the side door. And when people leave the parking area, they check in at the back. **James Weisman** reiterated that the front door is symbolic more than for regular entrance and exit.

Ned Orleans commented that invitations to comment were sent to abutters within 900 feet. There were responses and suggestions from 41 people. **Jack Robinson** said that they had tripled the radius for notifying abutters. The comments are part of the public record.

Michelle Lazerow asked for figures on the length of the building and the total square footage with the porch.

Megan Ottens-Sargent asked what overnight rates were and the clientele the Robinsons were aiming to attract. Mr. Robinson said that the resort has a 90% occupancy rate. They stay open in the winter and the winter rates are \$75 to \$125. Summer rates are \$150 to \$295.

Megan Ottens-Sargent asked about the Affordable Housing Aspect of the project. **Christina Brown** explained that the Commission always has to be aware of the affect of commercial development on affordable housing on the Island. **Jo-Ann Taylor** will send information to the Robinsons.

James Weisman commented that the intention is not to be closer than the setbacks of 20 feet on the sides and 25 feet on the front, including the porch. The applicant won't be looking for variances. He believes that one of the nicer aspects of the project is the porch, which seems to be raising a lot of issues.

Christina Brown said that there are two letters in the file; one from Simone McCarthy commented that she was opposed to the project based on its size and scale. The second letter was also in opposition.

Christina Brown continued the public hearing to Thursday, March 25th at 7:30 p.m.

3. COLEMAN SUBDIVISION – DISCUSSION AND RE-VOTE

Commissioners present: J. Athearn, J. Best, C. Brown, J. Greene, N. Orleans, M. Ottens-Sargent, R. Schwartz, D. Sederholm, P. Strauss, R. Toole, A. Woodruff

Doug Sederholm recused himself from the vote because of a conflict of interest.

Mark London raised a concern about the March 11th Commission vote on the written decision.

- In the oral decision, one of the possible conditions discussed was siting a house on the ridge of the hill. Notwithstanding that the condition had been discussed many times, it was never moved and adopted at the time of the actual decision.
- Last week, when the Commission voted on the written decision, the Commission believed consensus had been reached on the condition and it was included in the written decision.
- The Commission received a letter from the Coleman's lawyer saying that the issue had not been decided and legally the written decision has to reflect the decision that was made at the meeting. The letter said that the Coleman's' are sensitive to the visual impact and they will work with the Chilmark Planning Board on the house siting, but they do not want to include a condition that did not follow the Commission's procedure.
- **Jane Greene** commented for the record that she objects to including conditions as appendixes. **Mark London** explained that this is the format that has been used by the Commission, by the Cape Cod Commission, and was recommended by Eric Wodlinger.

John Best moved and it was duly seconded to reconsider the vote on the written decision. Voice Vote. In favor: 7. Opposed: 0. Abstentions: 0.

John Best moved and it was duly seconded to adopt the written decision of March 18, 2004 as written.

- **Jim Athearn** clarified that the written decision of March 18th does not include the condition in question.
- **Jane Greene** stated that she recalled that at the time of the oral decision, there was a strong recommendation that the Colemans work with the Chilmark Planning Board.
- **James Athearn** said that he would accept a motion to further amend the decision to include that the Commission strongly recommends that the Coleman's' work with the Chilmark Planning Board on the siting of the house on the ridge. He said that he would be a strong proponent of the suggestion and the Commission should fix up the wording of the suggestion and put it in a letter.
- **Jane Greene** commented that such a recommendation would not be binding to a new owner of the property.

- John Best stated that recommendations are totally non-binding.

Jane Greene moved and it was duly seconded that the Commission suspend the rules [for ending its meetings before 11:00 p.m.] for five minutes. Voice Vote. In favor: 12. Opposed: 0. Abstentions: 0.

- John Best suggested that Mark London write the recommendation in the form of a letter. Jane Greene suggested that the letter be recorded at the registry of deeds but there was no formal motion to this effect.

Roll Call Vote on the main question of approval of the written decision. In favor: J. Athearn, J. Best, C. Brown. In favor: 4. Opposed: none. Abstentions: M. Ottens-Sargent. The motion carried. [NOTE: While calling out Commissioners' names in conducting the Roll Call Vote, Bill Veno mistakenly failed to request the votes of J. Greene or A. Woodruff, both of who were eligible to vote on the motion. As a majority of the nine Commissioners who voted on the initial decision were given the opportunity to vote on this motion, and the addition of the votes of the two omitted Commissioners could not have changed the outcome of the vote, no practical effect resulted from the omission and the vote on the motion is valid.]

Staff will prepare a letter including the recommendation.

The meeting adjourned at 11:10 p.m.

Chairman

Date

Clerk-Treasurer

Date